

APPEAL NO. 020337
FILED MARCH 26, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 16, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____. The claimant appeals the determination on sufficiency grounds and asserts error in the hearing officer's refusal to add an issue of waiver by the respondent (carrier) of the right to dispute compensability. The carrier urges affirmance.

DECISION

Affirmed.

INJURY ISSUE

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant attached new evidence to her appeal, which would purportedly show that she sustained the claimed injuries in the course and scope of her employment on _____. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence offered is not so material that it would probably produce a different result. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

WAIVER ISSUE

We do not agree that the hearing officer abused his discretion by declining to add an issue of carrier waiver that was first requested at the CCH. An issue not taken up at a benefit review conference and that is not added by the agreement of the parties may be added as set out in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(e) (Rule 142.7(e)) upon a finding of good cause by the hearing officer. That rule sets out a procedure for seeking addition of the issue not later than 15 days prior to the CCH. The procedure was

not followed in this case, nor was good cause argued for seeking to add that issue for the first time at the CCH. The hearing officer declined to add the issue. Under the circumstances of this case, we cannot say that the hearing officer abused his discretion in declining to add the waiver issue.

The decision and order of the hearing officer are affirmed.

The true corporate name of the self-insured is **a governmental entity that self-insures, either individually, or collectively through the (SELF-INSURED)** and the name and address of its registered agent for service of process is

**JW
(ADDRESS)
(CITY) TEXAS (ZIP CODE).**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge